Supreme Court, U.S.
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No. 03 640

IN THE

Supreme Court of the United States

LLOYD VICKROY and
TIMOTHY J. VICKROY,

Petitioners

v.

WISCONSIN DEPARTMENT OF
TRANSPORTATION, et al.,

Respondents

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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22 pp

QUESTIONS PRESENTED

May a state through, law, custom or practice enable its residents to convert property owned and taxed in a different state to their own use and profit without transfer of title, or process due under the 6th amendment and does this practice violate the Commerce Clause and the Privileges and Immunities clause?

Does Wis. Stat. 814.28 Violate the Right to Free Passage and the Privileges and Immunities Clause?

May a court ignore denial of procedural due process when the question is presented to it?

Under what conditions is a state entity transformed into a self-sustaining instrumentality, and has the state of Wisconsin Department of Transportation passed this threshold?

LIST OF PARTIES

Timothy J. Vickroy; Lloyd Vickroy, Petitioners

State of Wisconsin Department of Transportation; Interment Corporation; Wearer D. Swannigan; Ultea, Inc.; County of Racine, Wisconsin; Township of Mount Pleasant, Wisconsin; Crum & Forster, Respondents.

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IN THE

Supreme Court of the United States

PETITION FOR THE WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

For cases from **state courts, federal district, and the Seventh Circuit Court of Appeals:**

OPINIONS BELOW

The opinion of the highest court to review the merits appears at Appendix A and is unpublished. The opinions of the Federal District Court appear in Appendix B. The opinion of the Wisconsin State Supreme Court appears in Appendix C. The Opinion for the Wisconsin State Court of Appeals appears in Appendix D. The opinion of the Racine County Circuit Court appears in Appendix E.

JURISDICTION

For cases from **state courts:**

Ervin v State 41. Wis. 2d 194; 163 N. W. 2d 207 (1968), The Mayor v Cooper (6 L. Ed.247, 1868).

For cases from **federal courts:**

Archie v City of Racine (847 F. 2d 1211:1988), Carey v Piphus (435 U.S. 247: 1978), Crandall v State of Nevada (73 U.S. 35:1867), Felder v Casey (487 US 131:1988), Giaccio v State of Pennsylvania (15 L. Ed. 2d. 447: 1966), The Mayor v Cooper (6 L. Ed.247: 1868), Saenz v Roe (526 U.S. 489: 1999), Edwards v California (314 U.S. 160: 1941).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments and Articles involved: The Fourth, Fifth, Sixth, Eighth, Eleventh and Fourteenth Amendments of the Federal Constitution as well as Article I § 10, and Article IV § 2 clause 1. Title 18 U.S.C. § 241,

242. Title 42 U. S. C. § 1983.

Wis. Stat. 814.28.

Wis Stat. §. 16.61 (4) (b); RDA

The established custom and practice in the State of Wisconsin of allowing the residents and businesses in that state to take possession and ownership of property belonging to others in order to satisfy their own debts, without the right of due process..

STATEMENT OF THE CASE

Petitioner Timothy J. Vickroy while traveling northbound on Wisconsin State Highway 31, northbound at State Highway 21, in the County of Racine, Township of Mount Pleasant, on December 2, 1998 did have an accident due to defect in roadway design, caused when a vehicle driven by Warner D. Swannigan, for his employer, now Intermet, Inc. and leased from ULTEA, Inc. Mr. Swannigan, then a resident of Michigan violated Timothy J. Vickroy's right of way and caused damage to the

vehicle he was driving and permanent injury to his person. Mr. Swannigan was cited at the scene of the accident.

Passerby summoned aid and paramedics as well as a police officer from the Township of Mount Pleasant arrived who at the rear of Mr. Vickroy's auto conspired to, and subsequently did violate Title 18 U.S.C. § 241, 242 in order to obtain forced release of Mr. Vickroy's auto to a private towing company by confining Mr. Vickroy in his car refusing to transport him for medical aid, to let him seek medical aid on his own, or let outside aid approach if it was some how obtained, thus created a special custodial relationship under Title 42 U. S. C. § 1983 .

Mr. Vickroy vigorously objected to this practice, but as the effects of the accident began to become apparent he was forced to choose between his property and care that might have meant his life; therefore he signed the release and only then was transported to an emergency

room for care.

On January 12, 1999 the counsel retained by Timothy J. Vickroy made it clear he would only pursue claims against the private parties for injuries. Timothy J. Vickroy and his father Lloyd Vickroy, co-owner of the vehicle involved in the accident, proceeded in state court to recover their vehicle that, despite a written agreement with Intermet's insurance company, Crum & Forester, which was made in bad faith by Crum & Forester, stating that the Vickroy's retained ownership and possession of the auto had been sold to an auto salvage yard, in Milwaukee some eight months before, with out consent or due process of law. Thus making the act of taking Vickroy's property, stolen property.

Before the Vickroy's, as nonresidents of Wisconsin, could have their day in court they had to comply with Wis. Stat.814.28 which required them to either retain a Wisconsin attorney or prepay the opposing

attorney, in this instance the lawyer for Interstate Towing and Mobile, $2000.00 in projected costs and attorneys fees before their case could be filed by the clerk. Wisconsin residents need only pay the filing fee with the court clerk.

The State of Wisconsin claimed in this suit, offering no proof, that the State of Wisconsin Department of Transportation was an agency of the State and therefore not open to suit. More importantly, it petitioned the circuit court to substitute the rules of civil procedure used by the Seventh Circuit for those used by the state of Wisconsin because those used by the state required discovery. Discovery would have given the Vickroys a list of every person in state, county or township government who violated a ministerial duty which caused or contributed to the accident in question. Information they have a right to by Wisconsin law. The Racine County Circuit court did denying them discovery and procedural

due process.

The Racine County Circuit Court dismissed the case against the State of Wisconsin Department of Transportation, as having immunity of the State.

The Racine County Circuit Court dismissed the case against Crum and Forester, on a motion by Vickroy, when it was thought that a good faith agreement was signed between them. The circuit court dismissed the case against Interstate Towing and Mobil, without discovery, because there was no contract with them.

The judge of the Racine County Circuit Court informed the Vickroys that their Missouri title to the property in question was meaningless under Wisconsin law. That court did not cite any case law to back this ruling up. That Vickroys contract was meaningless because they "must have known" that the car was going to be taken.

This verdict was appealed to the Wisconsin State

Court of Appeals and Supreme Court to no avail.

Six months before the State statute of limitations on the accident was to run out the attorney retained by Timothy J. Vickroy informed him that he would only continue representing him if he agreed to a settlement of $1400.00. Mr. Timothy J. Vickroy refused; after a search was unable to find further counsel and was forced to proceed pro se.

The Vickroys filed their case in federal court asking the court for relief and remedy from the civil torts and constitutional violations committed against them.

Additionally they asked for removal of the state case to federal court using The Mayor v Cooper (6 L. Ed.247: 1868) as their authority; later filing an amended complaint including civil RICO because of the confluence of behaviors, acts, and colluding between the private, municipal and state actors which violated the Vickroys's constitutional rights and laws and brought fraud upon the

Vickroys The State of Wisconsin which empowered them to do so have the effect of being a racket as defined under RICO statutes.

The district court, during a telephonic hearing, dismissed the Vickroys's case in total, and without discovery, because in its opinion there was no cause on which it could grant relief. Further, it concurred with the Township that a notice of claim should have been filed with the Township before any action by the district court including civil rights violations. The district court did promise a judicial inquiry into the actions of the police officer and paramedic.

When the district court's order and opinion arrived it did not include the private party defendants and actions by both those parties and the Vickroys caused the court to issue a second order and opinion.

The Vickroys filed an appeal with the Seventh Circuit. Who affirmed the judgment of the Federal circuit

court, then dismissed the case against Crum & Forester due to "want of prosecution".

REASONS FOR GRANTING THE PETITION

(1) The Seventh Circuit has concluded, in error, that the actions of the Racine circuit court did not violate the Vickroy's right to free passage nor impose costs on them that they did not impose on residents of Wisconsin. Listed among the liberties secured by the right to free passage in Crandall v State of Nevada (73 U.S. 35:1867) is ". . .a right of free access. . . " [to] "the courts of justice in the several States . . ." and that "this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it." The language of Crandall, *supra*, is very clear and all inclusive; it doesn't say the Federal courts residing in the several States, it embraces all courts of justice. When the Racine circuit court applied Wis. Stat. 814.28 to the Vickroys, making them pre-pay

Interstate Towing & Mobil's attorney $2000.00 before their case could be heard in court, it not only violated Article IV § 2 clause 1 of the United States Constitution, a well-spring of the right to travel, it violated their right to free passage as the statute only applies to nonresidents of Wisconsin, who are citizens of the United States, and therefore places upon them the disabilities of alienage. Further the Vickroy have the right of Civil Rights removal when they cannot enforce their rights in a state court.

(2) The Fourteenth Amendment cannot be avoided simply by a change of label, Giaccio v State of Pennsylvania (15 L. Ed. 2d. 447: 1966), and that both liberty and property are protected against any state deprivation which does not meet standards of due process; further a law fails to meet the requirements of due process if it leaves the public uncertain as to the conduct it prohibits, or leaves judges and jurors free to decide

without any legally fixed standards what is or is not prohibited.

The *Slaughter House Cases*, (Bittker on the Regulation of Interstate and Foreign Commerce by Boris I. Bittker with Brannon P. Denning, Aspen Law & Business 1185 Avenue of the Americas, New York, NY 10036:1999), currently define the limits of the Fourteenth Amendment as those right of national citizenship. The protections of the Sixth Amendment are among these rights. The established custom and practice of the State of Wisconsin, fully supported by the Racine circuit court who, denied them the enjoyment of their contract with Crum & Forester, of allowing its residents to take possession of another persons property without due process violates the protections of national citizenship. That the state of Wisconsin has chosen to abridge the Federally protected Privileges and Immunities of its own citizens is irrelevant and is no defense. Both the Federal

district court and the Seventh Circuit have remained silent on this issue.

(3) The Racine circuit court has, at the behest of the state of Wisconsin Department of Justice, abandoned Wisconsin's rules of procedure for those of the Seventh Circuit simply because the rules of Wisconsin did not favor the purposes of the state at that point in time. This act denied the Vickroys procedural due process. This the state's attorney freely admitted saying she knew "it was not the case" that the Vickroys should not have had the process due them, but "the principle was the same." Procedural due process is absolute and must be compiled with, Carey v Piphus (435 U.S. 247: 1978). This issue first raised in Federal district court and was left unaddressed by that court or the Seventh Circuit.

This serves as an introduction to a structure of related issues first raised in Federal district court. Wis.

Stat. Wis Stat. §. 16.61 (4) (b); RDA allows an agency, or department of Wisconsin to destroy all records of a project after six years. This is they very information that both the state of Wisconsin and Township of Mount Pleasant require in exacting detail, including the responsible individual(s) by name, in order to file a notice of claim. That this information is non-existent was confirmed in the Townships first brief to the Seventh Circuit where it declared the documents needed to successfully complete such notice had been destroyed. That a state, or one of its municipal corporations, may require information that it knows does not exist for a notice of claim is reprehensible. That they may do the same in court is antithetical to an American system of justice and ordered liberty. The petitioners request equity jurisdiction from the court and injunctive relief. For no party should be allowed, by law, to preemptively destroy evidence or to make systems of remedy under law into

rigged slot machines.

(4) The Vickroy's cited the Seventh Circuit's own Archie v City of Racine (847 F. 2d 1211:1988) in support of the unopposed affidavit of petitioner Timothy J. Vickroy first presented in Federal district court is in response to the error of the Federal district court which ignored the aforesaid affidavit and held that a notice of claim with the Township of Mount Pleasant was necessary in spite of the fact that Felder v Casey (487 US 131:1988) forbids the use of any notice of claim system as a bar from litigation in Federal court to any civil rights actions, such as those under Title 18 U.S.C. § 241, 242 and Title 42 U. S. C. § 1983. Types of violations of constitutional rights that can clearly be seen in the affidavit. The Seventh Circuit has ignored this appeal.

(5) Lastly two issues remain unaddressed by either court; that of removal, The Mayor v Cooper (6 L. Ed.247:

1868), which neither court has replied despite repeated entreaties and what was fundamentally a plea for equity jurisdiction from the Appellate court concerning the essentially discriminatory effect of Wisconsin "no-fault" insurance laws, and the practice it has engaged in of shaping its criminal and tort law around this concept.

The first issue is simple; the rulings of the state courts are determinative simply because the Federal district court, and the Seventh Circuit on appeal, have refused to deal with the issue of removal. They have, in fact, ignored it in spite if its central position in the Vickroys pleadings.

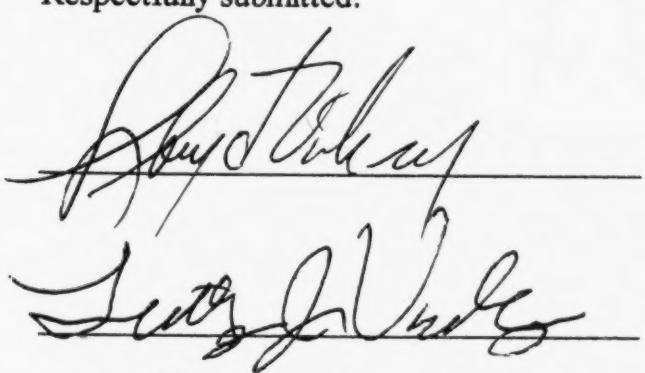
The second issue is far less simple for dual sovereignty gives the several states wide latitude in formulating their individual laws, however the Commerce Clause as well as the Privileges and Immunities Clause of Article IV of the Federal Constitution limit laws that have discriminatory effect or intent as they relate to non-

residents. Simply, Wisconsin law leaves a non-resident unable to treat with Wisconsin residents, human or corporate, on an equal footing and their tort system unduly favors residents of the state. Against these conditions the petitioners request injunctive relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted:



Date: 17 October 2003